



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-744 (Remand)

Investigations: Terminations, Modifications and Rulings:

CERTAIN MOBILE DEVICES, ASSOCIATED SOFTWARE, AND COMPONENTS THEREOF

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to terminate the above-captioned investigation because the only remaining asserted patent has expired.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C., 20436, telephone (202) 205-3115. Copies of all non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov/>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 5, 2010, based on a complaint filed by Microsoft Corporation of Redmond, Washington (“Microsoft”). 75 *Fed. Reg.* 68379-80 (Nov. 5, 2010). The complaint alleges

violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices, associated software, and components thereof by reason of infringement of U.S. Patent Nos. 5,579,517 (“the ’517 patent”); 5,758,352 (“the ’352 patent”); 6,621,746 (“the ’746 patent”); 6,826,762 (“the ’762 patent”); 6,909,910 (“the ’910 patent”); 7,644,376 (“the ’376 patent”); 5,664,133 (“the ’133 patent”); 6,578,054 (“the ’054 patent”); and 6,370,566 (“the ’566 patent”). Subsequently, the ’517 and the ’746 patents were terminated from the investigation. The notice of investigation, as amended, names Motorola Mobility, Inc., of Libertyville, Illinois, and Motorola, Inc., of Schaumburg, Illinois (collectively, “Motorola”), as respondents. Motorola, Inc., n/k/a Motorola Solutions, was terminated from the investigation based on withdrawal of infringement allegations on July 12, 2011.

The presiding ALJ issued the final ID on violation in this investigation on December 20, 2011, finding a violation of section 337 only with respect to the ’566 patent. The Commission affirmed the ALJ’s finding and issued a limited exclusion order barring the entry of articles that infringe the ’566 patent. *See* Commission Opinion at 36 (May 18, 2012).

Microsoft appealed to the U.S. Court of Appeals for the Federal Circuit for review of the Commission’s determination of no violation with respect to the ’054, ’762, ’376, and ’133 patents. On October 3, 2013, the Federal Circuit affirmed the Commission’s determination of no violation with respect to the ’054, ’762, and ’376 patents. The Federal Circuit remanded consideration of the ’133 patent to the Commission, with instructions to apply a different construction of the asserted ’133 patent claims. *Microsoft Corp. v. Int’l Trade Comm’n*, 731 F.3d 1354 (Fed. Cir. 2013). On December 16, 2013, the Federal Circuit affirmed the

Commission's exclusion order based on infringement of the '566 patent. *Motorola Mobility, LLC v. Int'l Trade Comm'n*, 737 F.3d 1345 (Fed. Cir. 2013).

On December 13, 2013, the remanded '133 patent expired. On December 16, 2013, Motorola filed a motion with the Federal Circuit seeking to have the court's decision with respect to that patent vacated based on mootness due to the expiration of the '133 patent. On January 3, 2014, in a non-precedential order, the Federal Circuit denied Motorola's motion. *Microsoft Corp. v. Int'l Trade Comm'n*, Appeal No. 2012-1445, Order (Fed. Cir. Jan. 3, 2014). The court stated its conclusion was not dependent on "whether the Commission can any longer take action on the '133 patent or otherwise has any continuing interest in this matter." *Id.* at 2.

Because the '133 patent has expired, the Commission has determined no remedy may issue in this investigation. The Commission has therefore terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: April 30, 2014

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